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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,764	03/25/2004	Thomas C. May	22956-0745(MIT5038)	5892
21125 7590 10/24/2008 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604				
EXAMINER				
SHAFFER, RICHARD R				
ART UNIT		PAPER NUMBER		
3775				
NOTIFICATION DATE		DELIVERY MODE		
10/24/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet@nutter.com

Office Action Summary

Application No.

10/808,764

Applicant(s)

MAY ET AL.

Examiner

Richard Shaffer

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al (US Patent 5,480,403).

Lee et al disclose a bioabsorbable copolymer of glycolide or lactide (**Column 4, Lines 22-29**) implantable cross-pin (**Figures 4-6**) comprising: an elongated member extending from the proximal end (**134**) to a distal end (half of the length of **Figure 5**); a bullet-shaped nose member (**131** and rest of **132**) extending out from the distal end of the elongated member; an axial trough (**135**) in the elongated member; a guide wire opening (an end of **133**) in the distal end of the nose member; and an interior tunnel having a passage with an enclosed circular perimeter (rest of **133**) extending axially (both the perpendicular axial direction as well as longitudinal axial direction along **135**). A guide wire (**101**) is seated in the axial trough and extends through the guide wire opening.

Claims 1, 3 and 7-9 rejected under 35 U.S.C. 102(e) as being anticipated by Supinski (US Patent 6,579,295).

Supinski disclose (**Figures 4-8**) a bullet-shaped bioabsorbable (**Column 7, Lines 40-44**) device comprising: an elongated member (majority of **80** except for portion including **88**); a nose member (rest of **80** containing **88**); an axial trough (**82**); a guide wire opening (distal end of **88**); and an interior tunnel (rest of **88**) with an enclosed circular perimeter. A guide wire (**110**) is seated in the axial trough (must be due to location of hole in **100** in alignment with **88**).

Response to Arguments

Applicant's arguments filed July 18th, 2008 have been fully considered but they are not persuasive.

Applicant asserts in response to the anticipation of the claims by Lee et al that Lee et al fails to disclose the nose member having proximal and distal ends and a guide wire opening in the distal end. While the examiner agrees that the opening is not in the distalmost point of the nose member, the opening is indeed in "the distal end." An end is not the terminal end point necessarily, but rather the portion leading to such. Clearly, the hole 133 is in the portion leading to the terminal point of the nose member and thus is an opening in the "distal end" of the nose member.

In regard to applicant's arguments regarding Supinski, it seems that applicant argues that since the guide pin 110 passes through screw 100, that it cannot be "seated" in the axial trough of the nose member. This is not persuasive due to the pin clearly being seated within the guide win which is also within the trough as shown in

Figure 7 which is also cited by applicant. It does not need to be seated directly connecting the base of the trough, merely that it is seated "within" the trough which it is. Further, applicant asserts that the pin is not seated in the recess 88. While it is not clear whether the pin makes direct contact with the recess or not, it is indeed "seated" within the passage at least by the screw 100.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Shaffer/
Examiner, Art Unit 3775
/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733